



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Selim v Saafi, 2024 ONLTB 12757

Date: 2024-02-29

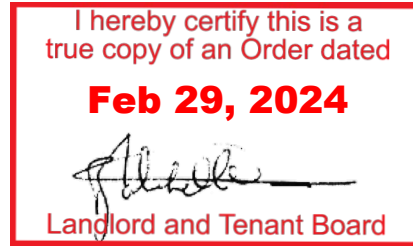
File Number: LTB-L-086679-23

In the matter of: 402, 114 VAUGHAN RD
YORK ON M6C2M1

Between: Susan Selim

And

Kais Saafi



Landlord

Tenant

Susan Selim (the 'Landlord') applied for an order to terminate the tenancy and evict Kais Saafi (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

This application was heard by videoconference on February 8, 2024.

The Landlord Legal Representative Ravis Mohebbian, the Landlord and the Tenant attended the hearing.

The Board was assisted by a French Language Interpreter, Manual Costa throughout the hearing.

Preliminary Issue:

1. The Landlord requested that the Board not admit as evidence the submissions of the Tenant because they were uploaded into the Portal late. Rule 19.1 of the Board's Rules provides that disclosure must be at least 7 days prior to the hearing, and Rule 19.2 provides that responding disclosure must be at least 5 days prior to a hearing.
2. The Landlord submitted that the Tenant submissions were only uploaded to the Portal and had not been disclosed to them.
3. The Tenant submitted that they had technical issues uploading the submissions to the Portal.

4. The Landlord also submitted that they had disclosed their submissions via email to the Tenant. However, the lease agreement did not provide for service by email and the parties did not enter into a written agreement to serve documents by email. As a result, service by the Landlord was not in accordance with an authorized method as set out in Rule 3.1 or 3.4. The Landlord confirmed that they only had a verbal tenancy agreement.
5. I considered that both parties did not have clean hands regarding disclosure; the self-represented Tenant may not have understood that they must disclose their submissions to the Landlord and upload to the Portal, and there is no reasonable explanation for why the Landlord did not serve documents via an authorized method.
6. I also note that it is not uncommon for parties to provide additional disclosure during the hearing, which occurred in this particular hearing of this application.
7. I also note that the Rule 1.6 a, provides that the Board may waive or vary any provision of the Rules to lengthen or extend any time limit except where prohibited.
8. Therefore, for the reasons noted above the Landlord request was denied. Any objections to anything that a party seeks to admit into evidence could be addressed at that time.
9. The Landlord and the Tenant were affirmed by the Board prior to their testimony.

Determinations:

L1 Application – Non-Payment of Rent

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,203.75. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$72.45. This amount is calculated as follows: $\$2,203.75 \times 12$, divided by 365 days.
5. The Tenant has paid \$6,300.00 to the Landlord since the application was filed.
6. The Landlord testified that the rent arrears owing to February 29, 2024, are \$303.75.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,150.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

9. Interest on the rent deposit, in the amount of \$67.45 is owing to the Tenant for the period from November 8, 2022, to February 8, 2024.
10. The Tenant did not agree with the quantum of arrears owing. They submitted that there had been a dispute over the provision of cable services. Specifically, that the parties had agreed in April 2023 that the Landlord would add cable services for a fee of \$50.00 to be added and included with the monthly rent payment.
11. It was uncontested that the Tenant paid the fee for several months, although this was not accounted for in the rent roll of the Landlord.
12. It was uncontested that the Landlord stated that they stopped providing cable services in September 2023, after the Tenant indicated that they would secure their own plan.
13. The Tenant did not dispute that he only paid the Landlord \$2100.00 per month after the cable dispute because it was costing him more per month than the \$50.00 the Landlord had been charging.
14. The Tenant did not disclose a list of issues they intended to raise at a hearing in accordance with section 82 of the Act. As a result, I did not consider if the reduction of services had been unilateral by the Landlord or not. The Tenant was advised that they may pursue their own application with the Board should they choose to do so.
15. The Landlord confirmed that the arrears or rent excluded any fees for cable services.
16. I am satisfied that beginning in October 2023 that the Tenant had not paid the lawful rent in full and on time. The lawful rent was \$2,150.00 after the reduction for the cancellation of the provision of cable services in September 2023. It was undisputed that the fee for cable services was \$50.00 and therefore the Tenant did not have cause to unilaterally reduce the rent by a greater amount.
17. The Landlord stated that they did not make an effort to negotiate a payment plan with the Tenant prior to the hearing. Section 83(6) of the Act is titled: **“Refusal for certain arrears of rent”** and states:
 - (6) Without restricting the generality of subsections (1) and (2), if a hearing is held in respect of an application under section 69 for an order evicting a tenant based on arrears of rent arising in whole or in part during the period beginning on March 17, 2020 and ending on the prescribed date, in determining whether to exercise its powers under subsection (1) the Board shall consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant’s arrears
18. I am satisfied that it would be fair to grant relief from eviction for the unpaid arrears of rent, particularly since the quantum of arrears amounts to less than 25% of the lawful monthly rent. The Landlord also stated that they would be willing to consider a payment plan with the Tenant although they had not previously made any effort in accordance with section 83(6) of the Act to negotiate a repayment plan. The Tenant shall be directed to pay the arrears.

L2 Application – Persistent Late Payment of Rent

19. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 7 times in the period January to October 2023. There were 3 payments paid on or before the 1st day.
20. The N8 notice of termination indicated that the August 2023 rent was “non-payment”; however, the rent roll shows that the Tenant paid August rent on July 27, 2023. This does not reflect non-payment nor a late payment. As a result, the August 2023 payment was deemed to be one of the 3 payments made on or before the due date during the period January to October 2023.
21. The Landlord stated that because it was not made on the first day of the month the rent roll shows this as a non-payment. I gave this creative accounting no consideration since it is misleading to somehow suggest that a payment made early could be deemed either a late or non-payment as the Landlord was attempting to do.
22. Since the N8 notice of termination for late payments had been served on the Tenant, they continued to pay rent late, except for February 2024.
23. The Tenant pays rent via online banking etransfer. The Tenant submitted the etransfer transaction receipt from their bank that showed the February 1, 2024, rent payment was made and auto deposited to the Landlord bank account on February 1, 2024.
24. The Landlord submitted their bank records that indicated that the February 1, 2024, rent payment was deposited on February 2, 2024.
25. The parties were unable to explain this discrepancy in the banking records. However, this is not significant given my findings that the Tenant has consistently paid rent late. However, the Landlord may wish to be sure a payment is truly late should a similar bank accounting discrepancy arise in the future.
26. It was uncontested that the Tenant stated that they could pay rent in full and on time when it comes due.
27. The Landlord submitted that they had lost confidence in the Tenant ability to pay lawful rent in full and on time and were seeking eviction. However, as noted above, the Landlord did not cross-examine the Tenant on this issue, and the Landlord did not proffer any testimony themselves to that effect. Therefore, I am not giving any consideration to this closing submission.

Relief from Eviction

28. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

29. The Tenant should be aware that all rent and arrears payments' due dates are all "on or before" the dates set out below, meaning that the Tenant must ensure that the payments are made in full by the due date each month. If the Tenant is late with a payment, does not make a payment, or only makes a partial payment the Landlord may file an application with the Board, without notice to the Tenant, for an order for eviction. A copy of that order would be provided to the Tenant.

It is ordered that:

L1 Application – Non-Payment of Rent

1. The Tenant owes the Landlord \$489.75 for arrears of rent and the application fee.
2. The Tenant will pay to the Landlord \$489.75 on or before April 12, 2024.
3. If the Tenant does not pay the Landlord the full amount owing on or before April 12, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 13, 2024, at 7.00% annually on the balance outstanding.
4. If the Tenant fails to make any payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after February 29, 2024

L2 Application – Persistent Late Payment of Rent

5. If the Tenant pays the L1 portion of the order in accordance with paragraph 2 above, the tenancy shall continue on the following terms.
6. The Tenant shall pay the Landlord the monthly rent due on or before the first day of the month for the period April 1, 2024, to March 2025. The Tenant shall pay the Landlord the March 2024 lawful rent due on or before March 11, 2024.
7. If the Tenant fails to make any of the payments in paragraph 6 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

February 29, 2024
Date Issued



Robert Patchett
Vice-Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.